

STATE OF MINNESOTA  
OFFICE OF ADMINISTRATIVE HEARINGS  
FOR THE MINNESOTA TRANSPORTATION REGULATION BOARD

In the Matter of the Petition of Lange Transport, Inc. for Extension of Charter Carrier Permit Authority to Transport Passengers from Origin Points in Polk County Outside a 50-Mile Radius from Gonvick, Minnesota, and from Points in Lake of the Woods County, to All Points in Minnesota and Return.

FINDINGS OF FACT, CONCLUSION AND  
RECOMMENDATION

The above-entitled matter came on for hearing before Administrative Law Judge Richard C. Luis in Crookston on May 17 and 18, 1995. The testimony of one witness was taken out of order, on May 11, 1995, when the Administrative Law Judge and counsel were in Crookston for testimony scheduled in a companion matter (Petition of Triangle Transportation Co., Inc., OAH Docket No. 7-3001-9606-2, TRB Docket No. CH 146851/A-94-795). The record closed on October 11, 1995.

Gene P. Johnson, c/o Gene P. Johnson, Ltd., P.O. Box 2471, Fargo, ND 58108, appeared on behalf of Lange Transport, Inc. ("Lange", "Petitioner"). Thomas J. Van Osdel, Van Osdel and Miller, Ltd., P.O. Box 2943, Fargo, ND 58108, appeared on behalf of all the Protestants in this matter - Triangle Transportation Co., Inc. ("Triangle"), Jutz, Inc., d/b/a Bemidji Bus Lines ("Bemidji", "Jutz") and Red River Trails, Inc.

NOTICE

Notice is hereby given that, pursuant to Minn. Stat. § 14.61, and the Rules of Practice of the Transportation Regulation Board, and the Rules of the Office of Administrative Hearings, exceptions to this Report, if any, by any party adversely affected must be filed within 20 days of the mailing date hereof with the Transportation Regulation Board, Minnesota Administrative Truck Center, 254 Livestock Exchange Building, 100 Stockyards Road, South St. Paul, Minnesota 55075. Exceptions must be specific and stated and numbered separately. Proposed Findings of Fact, Conclusions and Order should be included, and copies thereof shall be served upon all parties. If desired, a reply to exceptions may be filed and served within ten days after the service of the exceptions to which reply is made. Oral argument before a majority of the Board may be permitted to all parties adversely affected by the Administrative Law Judge's recommendation who request such argument. Such request must accompany the filed exceptions or reply, and an original and five copies of each document must be filed with the Board.

The Minnesota Transportation Regulation Board will make the final determination of the matter after the expiration of the period for filing exceptions as set forth above, or after oral argument, if such is requested and had in the matter.

Further notice is hereby given that the Board may, at its own discretion, accept or reject the Administrative Law Judge's recommendation and that said recommendation has no legal effect unless expressly adopted by the Board as its final order.

### STATEMENT OF ISSUE

Whether the Petitioner should be granted an extension of its charter carrier permit authority to serve areas in Polk County outside a 50-mile radius from Gonvick, Minnesota and to serve the origin point of Wheeler's Point in Lake of the Woods County?

Based upon all of the proceedings herein, the Administrative Law Judge makes the following:

### FINDINGS OF FACT

1. The original Petition filed in this matter on December 19, 1994 requested charter carrier permit authority for the balance of Polk County lying outside a 50-mile radius from Gonvick, Minnesota and for authority to serve Lake of the Woods County. At the hearing, Lange reduced the territory proposed for service in Lake of the Woods County to the single point of Wheeler's Point, approximately 12 miles north of Baudette, the county seat.

2. The Petitioner has been in the charter bus business (it has operated school buses since 1973) since 1986, when Eugene Lange incorporated a business he had operated since 1983. Lange's operations are based in Gonvick, Minnesota, a community located in western Clearwater County. Lange has authority to transport passengers under charter from Gonvick and points located within a 50-mile radius of Gonvick to all points in Minnesota and return, from all points in the Counties of Kittson, Roseau and Marshall to points in Minnesota and return, and from all additional portions of Polk County outside a 50-mile radius from Gonvick to all points in Minnesota and return. This "balance of Polk County" authority is restricted to transportation of charters carrying no more than 40% of their passengers from the designated restricted area. Similar (40% . . .) restrictions on Lange's authority exist for charters originating in designated areas of Cass and Hubbard Counties, but that territory is not in contest in this proceeding, so those restrictions are immaterial.

Lange filed this Petition in order to be able to serve all of Polk County without restriction, and (originally) to serve charters originating in Lake of the Woods County. In the absence of Lake of the Woods County supporting witnesses, except for one representing a business at Wheeler's Point, Lange amended its Petition orally at the close of the hearing to seek to serve only the origin point of Wheeler's Point in Lake of the Woods County, rather than all points in the County.

3. Lange professes no desire to serve the community of East Grand Forks, and has concentrated its effort in this matter to establish that there is a need for additional charter service in Crookston. The current territory in Polk County Lange is authorized to serve without restriction, that within 50 miles of Gonvick, falls just short of the Crookston city limits. Lange has found the "40%" restriction described above to be "not workable", that is, most charters organize from a single point where all the passengers get on and off, and to organize trips with "piecemeal" pickup points for charters is relatively rare. Since Lange was granted the authority creating the "40%" restriction in March of 1994, it has received no business that fits under the restriction (Tape, Side 1).

4. Lange operates its charter business with two 47-passenger motor coaches, each of which is equipped with television, VCR, restroom, air conditioning and card tables. On February 1, 1995, following a January 10, 1995 on-site inspection, Lange received a safety rating of "Conditional" from the Federal Highway Administration of the US Department of Transportation, effective February 9, 1995. The document imposing the "Conditional" rating was filed, along with a clarifying Affidavit from Eugene Lange, on August 14, 1995 (at the Administrative Law Judge's request), and both documents are admitted to the record. The Highway Administration found Lange to be deficient with respect to applicable safety regulations in the area of "Hours of Service of Drivers". Mr. Lange's Affidavit establishes that, as to the Petitioner's equipment, that it meets the safety standards established by the Minnesota Department of Transportation. There has never been a proceeding initiated by any governmental agency establishing or alleging that Lange's charter buses do or did not comply with Minnesota Department of Transportation or US Department of Transportation Safety Standards.

The Petitioner admits also that the Federal inspection found that it was behind in paperwork establishing that its drivers had been tested for controlled substances and with other driver medical records.

5. Regarding the financial fitness and ability of the Petitioner, no separate balance sheet for the incorporated charter business is presented for the record. Lange relies instead on Petitioner's Exhibit 3, called the "Personal Financial Statement of Eugene Lange" and an explanatory statement clarifying that document filed by Mr. Lange's counsel on August 14, 1995 in response to a request for the Administrative Law Judge to file a separate Statement of Assets and Liabilities for the corporation-Petitioner.

6. Based on counsel's filed explanation, it is reasonable to estimate that the Petitioner has vehicle assets of \$110,000 (the value of the two charter buses), approximately \$22,000 in real estate (46% of the value of the bus shed and garage combined - the 46% was derived by dividing the total bus value of \$238,000 into the charter bus value of \$110,000), and liabilities of approximately \$67,500 (a loan against

one of the charter buses of approximately \$56,000 and a loan secured by the value of "buses" as collateral, 46% of which is approximately \$11,500). This analysis yields an estimated net worth of approximately \$64,500 (\$132,000 - \$67,500) for the Petitioner. This estimate, along with the fact that Lange has been in the charter business for over 12 years with operations that would be expanded only slightly if the Petition herein is granted, show that the Petitioner is financially fit and able to conduct the proposed additional operations it seeks authority for in this case.

7. On March 14, 1995, Lange Transport was issued an Administrative Penalty Order (APO) by the Minnesota Department of Transportation (MnDOT). At the time of the hearing, the Administrative Law Judge allowed testimony, under seal, regarding the allegations in the APO. On September 27, 1995, the ALJ issued a Letter-Order admitting, for reasons noted in the Letter-Order, the APO (ALJ's Exhibit 5) and the testimony taken about it under seal on May 17, 1995 (Tape, Side 3) to the public record in this matter.

8. After correspondence from Lange's counsel in response to the issuance of the APO, and subsequent oral negotiations between counsel and Elizabeth M. Parker, Director of MnDOT's Office of Motor Carrier Services, the Petitioner paid \$800 to the Department of Transportation on May 18, 1995 (the financial penalty proposed in the APO was \$1,400) and agreed not to pursue its right to a contested case hearing or a District Court hearing on the Order. Given Lange's agreement not to request a hearing, the Department accepted the \$800 payment in "full settlement of the administrative penalty order issued to Lange Transport, Inc. . . .". See July 14, 1995 letter from Elizabeth M. Parker to Gene P. Johnson, filed in this matter by counsel at the request of the ALJ on August 14, 1995.

9. The APO discussed above charges Lange with 11 separate rate violations in which the Petitioner undercharged or overcharged at variance with its rates on file with the Department. The Order notes "in summary, of the 11 bills and corresponding trip sheets audited, five showed undercharges of \$329.81 and six show overcharges of \$338.37". Lange's counsel contested a number of these allegations (which net to an \$8.56 overcharge) in his April 21, 1995 written response to the APO. No testimony was taken on these issues on May 17 and the Judge has not considered them in arriving at his Conclusions and Recommendation.

10. The APO also charged Lange with a violation of Minn. Stat. § 221.021, which prohibits operations that go beyond the scope authorized in Orders issued by the Transportation Regulation Board. Specifically, Lange was accused of transporting a charter party from Luverne to Baudette on February 22, 1994, which movement was outside the authorized scope of the charter authority noted above. During the course of his testimony on May 17, Mr. Lange admitted making the unauthorized movement noted in the APO. Lange was contacted by the owner of the Sportsman's Lodge at Wheeler's Point, Minnesota (12 miles north of Baudette) and asked if he could pick up a group of customers in Luverne and transport them to the Lodge. Lange agreed to do it when he learned that the Lodge's vehicle, which the owner had intended to use for the trip, had not been fixed on time and was still disabled. Lange believed he could do the trip because it was analogous to a lease arrangement, with Sportsman's Lodge as the Lessee. Lange entered into no written contract with the Lodge to effect the "lease"

because Lange believed oral “leases” of this nature were legal. Later in his testimony, Mr. Lange acknowledged that all lease arrangements for trips authorized under the Motor Carrier Laws of Minnesota had to be in writing. Compare Sides 3 and 5 of the Tapes.

11. In the fall of 1993, Lange bid for the contract to transport the University of Minnesota-Crookston football team on road trips. Lange submitted the low bid and was awarded the contract, but never performed because a complaint was filed by Triangle’s counsel noting that Lange had no authority to originate full-load intrastate charters from Crookston. Mr. Lange had been approached to make a bid in 1992 but did not because he knew he could not transport intrastate charter groups from Crookston. The following year, Lange entered a bid (which was awarded, as noted above) for the same business because he believed he “could have leased the business” (Tape, Side 1). At that time, Lange was still restricted against charter moves from Crookston unless 40% or fewer of the passengers got on there. Mr. Lange admitted subsequently (Tape, Side 5) that he also bid for the Minnesota-Crookston football contract for 1994. At that time, the lack of authority that had disqualified Lange in 1993 still applied.

12. On June 12, 1994, Lange began a charter in Bemidji for a trip to the Annual Girls State American Legion Convention in the Twin Cities. Along the way, he stopped to pick up passengers in three communities he was not authorized to serve - Brainerd, Pequot Lakes and Pine River. Mr. Lange had arranged initially to pick up passengers only in Bemidji, Cass Lake and Walker (which are within his authority), but the additional towns were added “within the last few days” because some of the originally-intended passengers had dropped out. Mr. Lange believed the original arrangements were controlling, and the thought of telling the party who arranged the charter that he could not stop in the other three towns and cancelling the charter “never entered (his) mind”. He also “did not even think about” entering into a lease to use his equipment under the authority of a carrier authorized to serve Brainerd, Pine River and Pequot Lakes. See Tape, Side 4.

13. Later in his cross-examination by counsel for the Protestants, Lange admitted he knew he had no authority to pick up passengers at Brainerd, Pine River and Pequot Lakes, or to make the Luverne-Baudette trip, but, in both cases, he “did not think it would cause (or would be) a problem”. He admitted he acts as he did on those occasions in “last minute rush” situations “did not even think about” possible violations of his authority in those situations.

14. In the fall of 1993, Lange transported a football charter from Nevis (a Hubbard County community located outside his authorized territory until March, 1994) to Austin. Lange thought it was an exempt trip because it was performed for a school district by a school bus contractor, even though he performed the charter with a motor coach rather than a school bus and even though his school bus driving contract is with Gonvick, not Nevis. Upon further cross-examination (Tape, Sides 4, 5), Mr. Lange admitted that if there was a “school bus contractor” exception, it was for travel in school buses only, not chartered coaches, and that it attaches only to travel for districts for which the carrier has school bus authority.

15. On two other occasions in 1995, Lange transported passengers from the Sportsman's Lodge in Lake of the Woods County to points in Minnesota (once to Minneapolis, once to Duluth). Lange had no authority to initiate these charter trips from Lake of the Woods County.

16. Gladys La Coursiere has traveled on several trips (since 1985) where the Petitioner provided bus transportation and has enjoyed Lange's equipment and services. She found the Langes to be pleasant people, that Mr. Lange was a good, prompt driver, that the bus was always clean and the heating and air conditioning equipment on the bus always worked properly.

17. Kenneth Stromberg is involved in arranging charter bus travel by virtue of his employment with the Joint Recreation-Education Board of the City of Crookston, for whom he oversees the City's Park and Recreation Department. The Recreation Board needs intrastate charter bus service approximately five to eight times a year to transport young people on ski trips and to the Twin Cities for sports events or to venues such as Valleyfair. The Board conducts a bidding process to award contracts for the provision of these services. In the past, it has used Bemidji and (primarily) Triangle, but Lange would be welcome to join the competitive bidding process if it succeeds in getting authority to serve Crookston. The Board prefers to use motor coaches because less comfortable school buses tend to be just as costly.

18. Lilja Snyder is a board member and director of the Crookston Area Seniors Association (CASA). She is familiar with CASA's needs for charter bus transportation, which include a frequent need for intrastate trips to destinations such as the casinos at Mahanomen and Warroad, Park Rapids and Brainerd.

19. Alton Arness, another CASA board member, testified as to CASA's charter bus needs in a fashion similar to Ms. Snyder, highlighting especially the need for transportation to the casinos. He hopes Lange is granted authority to serve Crookston so that CASA will have one more competitor from which to choose.

Neither Snyder nor Arness specified a number to quantify the “frequent need” for intrastate charter bus transportation on the part of the Crookston Area Seniors Association.

20. Kyle Roelofs is Vice President and General Manager of Red River Distributing, a farm implement dealer (Ford-New Holland) in Crookston. Roelofs uses charter bus transportation for the dealership’s customers. He has used Lange’s charter services four times, three times for visits to a plant in Winnipeg and once to a field demonstration in North Dakota. Red River Distributing finds Lange’s coaches to be comfortable and its service to be prompt and safe. Roelofs has a need for intrastate charter bus service several times a year, for customer field demonstrations in the Crookston area and to entertain customers at sporting events such as Twins and Vikings Games in Minneapolis or fishing trips to Lake of the Woods.

21. Chuck Larson is President of Red Power International, Inc., a Case farm implement dealer in Crookston. He is a past president of Crookston’s Chamber of Commerce. The dealership was formerly an International Harvester “company store”, at which Eugene Lange was employed as service manager, a position he left in the early 1970s. Lange is a well-known figure in Crookston and Larson would like to use Lange’s charter bus services more often but cannot, due to the “40%” restriction on how many people Lange can pick up there. All of Red Power’s intrastate charter needs are for full loads of passengers, who are customers being transported to the Twin Cities for trade shows or on fishing outings to Lake of the Woods. Larson needs such transportation two or three times a year. He has never been solicited for business by Protestants Red River or Bemidji, but he is familiar with and knows that Crookston is served also by Triangle.

22. Mario Schisano owns and operates, “Tours and Travel”, a travel agency in Crookston. Mr. Schisano’s agency books intrastate bus charters on an infrequent basis, and when he has needed such services in the past he has generally booked Triangle. He has found Triangle’s service to be satisfactory.

23. Marvin Bachmeier is the Athletic Director at University of Minnesota-Crookston in Crookston. The athletic department has a need for transportation by charter bus of its football and hockey teams and for the men’s and women’s basketball teams whenever the men and women travel to play at a common destination. The school, which recently changed from a two-year to a four-year institution, also is changing conference affiliation as a result. Many of the opponents are schools located in neighboring states, but Mr. Bachmeier still foresees a need for transportation from Crookston to Minnesota destinations such as the Twin Cities, Bemidji, Northfield, Moorhead, Duluth, Morris, New Ulm, Collegeville and St. Peter. Contracts are awarded to transport the school’s athletic teams on a “per season” basis in each sport. The contracts are awarded pursuant to a bidding process through an office on the main Twin Cities campus of the University, a process to which Bachmeier has input, but he cannot make the ultimate decision. Minnesota-Crookston has never used the charter bus services of Lange Transport. Mr. Bachmeier says that it is “okay with me” if Lange is awarded a bid to serve the University. However, Bachmeier understands that Lange currently has the authority only to pick up 40% or less of his passengers in Crookston and is restricted against picking up the full loads that would be provided by the athletic

teams as customers for charter bus services. Mr. Bachmeier has used Triangle in the past and is very pleased with the quality of its service.

24. Jerry Hennum and his wife own the Sportsman's Lodge, located at Wheeler's Point on Lake of the Woods in Lake of the Woods County, 12 miles north of Baudette on Highway 172. The Lodge is a large fishing resort, with a capacity for 220 persons and 84 employees. The Lodge operates year around, featuring ice fishing during the winter, and draws most of its patrons from the Upper Midwest states of Minnesota, Wisconsin, Iowa and the Dakotas.

One of the Lodge's services is to offer groups of customers bus transportation to and from the Lodge. This service is especially popular in the winter. To facilitate this service, Mr. Hennum has bought two coaches (from the Petitioner), but finds often that his buses are out picking up groups at the same time another group whose stay at the Lodge is over requires transportation back to its origin point. In order to provide such return service, the Lodge requires the service of charter coaches. If it is feasible, the charter that has returned one group home could then pick up another group for transportation to the Lodge (this situation is most likely when both groups are based in the Twin Cities) without facing a "deadhead" return trip.

25. Mr. Hennum foresees a need for charter bus service for Sportsman's Lodge on an intrastate basis approximately 15 times a year, five times during a summer and ten times each winter. He has called one of the Protestants, Bemidji Bus Lines, to provide such service, but they are often unavailable. Lange has provided interstate charter service to the Lodge in the past, particularly to Des Moines, Iowa, as well as some intrastate service (discussed earlier as having been performed without proper authority, see earlier Findings). Mr. Hennum has found Lange's equipment to be clean and well-maintained. As a board member of the County Tourism Board and the Baudette Chamber of Commerce, Mr. Hennum is authorized by those entities to support a grant of intrastate charter authority for Lange to serve Lake of the Woods County.

On the occasions when he used Lange to pick up or deliver customers within Minnesota, Mr. Hennum understood that he was leasing Lange's equipment, and understood such an arrangement to be legal.

26. Leon Pierce is the President, and manages the operations of, Protestant Triangle Transportation, Co., Inc. Triangle operates with 10 motor coaches, serving three regularly-scheduled bus lines. It has intrastate charter authority in North Dakota and nationwide interstate charter authority. Until October 6, 1995, Triangle had Minnesota intrastate "incidental" charter authority to serve the counties of Polk, Red Lake, Clearwater, Beltrami, Hubbard, Cass, Itasca and St. Louis. On October 6, it lost such charter authority in connection with dropping regular route bus service between East Grand Forks and Duluth. See ALJ's Exhibit 12. Triangle currently has a Petition pending before the Board, heard as a companion case to this matter, for charter authority to serve East Grand Forks and all areas within a 50-mile radius of East Grand Forks (OAH Docket No. 7-3001-9606-2, TRB Docket No. CH 146851/A-94-795).

Mr. Pierce believes that the granting of any extra authority to serve in territories



where he operates hurts the business of Triangle. Triangle's charter authority preceded the entry of Lange into the business and, within the territory Lange is authorized to serve, Triangle has lost potential business to Lange.

At the time of the hearing, Triangle was serving or had served all portions of Polk County lying outside a 50-mile radius from Gonvick, and was especially active in the two larger communities in that area - East Grand Forks and Crookston. Pierce decided to protest Lange's Petition because he feels it is equitable to maintain the status quo, with Triangle serving eastern Polk County and Lange concentrating on the areas where it currently is authorized to serve. Mr. Pierce sees equity in such an arrangement because in his Petition he has "given up" service to the communities and counties along Highway 2 more than 50 miles from East Grand Forks.

27. Todd Jutz is Vice President and Accounting Manager of Jutz, Inc. (Bemidji Bus Lines). At the time of the hearing, Bemidji had two motor coaches and a 19-passenger luxury bus for charter services, but was about to purchase two more coaches. Bemidji is authorized to provide charter carrier service to Polk and Lake of the Woods Counties, the very territories sought in this Petition. Mr. Jutz does not recall turning down an offer of business from the Sportsman's Lodge, and wants to serve the Lodge in the same capacity contemplated by the Lodge for Lange. Bemidji has served two of the same potential customers who testified in support of Lange's application to serve Crookston - the Minnesota-Crookston Athletic Department and the Crookston Areas Seniors Association, without complaint. Bemidji has also served accounts in the City of Fisher, just west of Crookston, from which Lange has run interstate charters. Bemidji wants to retain its Crookston-Fisher area business and protested Lange's Petition because it believes sufficient competition already exists in that area and a grant of additional charter carrier authority in the area would, it believes, hurt Bemidji's business.

Based upon the foregoing Findings of Fact, the Administrative Law Judge makes the following:

### CONCLUSIONS

1. The Administrative Law Judge and the Transportation Regulation Board have jurisdiction over the subject matter of the hearing.
2. Proper notice of the hearing was given in a timely fashion, and all relevant substantive and procedural requirements of law or rule have been fulfilled and, therefore, the matter is properly before the Administrative Law Judge.
3. The Petitioner's vehicles, being regularly maintained and free from defects, are within the safety requirements prescribed by the Department of Transportation.
4. The Petitioner is financially fit and able to conduct the operations sought in this Petition for extension of charter carrier authority.
5. Under Minn. Stat. § 221.121, a Petitioner must be "fit and able" to conduct any proposed operations. Under Minn. Rule 7800.0100, Subp. 4, the term "fit and able"

means, among other things, that the applicant is competent and qualified to conduct the proposed business, and is mentally able to comply with applicable rules and statutes. Based on these criteria, the Petitioner is not fit and able to conduct the proposed operations because of its repeated and willful disregard for the territorial limits of the area it is authorized to serve. The Petitioner's President has not demonstrated that he has a competent grasp of proper lease arrangements for motor vehicle transport or of other applicable laws and rules.

6. The Petitioner has proven that there is a need for the granting of authority to transport passengers under charter from the origin point of Wheeler's Point in Lake of the Woods County and from the origin point of Crookston, Minnesota. It has not proven the need for a grant of charter carrier permit authority to it to serve, at a level greater than it is already authorized, origin points in the rest of Polk County outside a 50-mile radius of Gonvick, Minnesota.

7. The Protestants have failed to prove that existing charter permit carriers fully and adequately meet the need for transportation of passengers under charter from the City of Crookston or from Wheeler's Point in Lake of the Woods County. They have established that the needs for transportation of passengers under charter in Polk County from origin points more than 50 miles from Gonvick, Minnesota, except for the City of Crookston, are met adequately by existing charter permit carriers.

THIS REPORT IS NOT AN ORDER AND NO AUTHORITY IS GRANTED HEREIN. THE TRANSPORTATION REGULATION BOARD WILL ISSUE THE ORDER OF AUTHORITY WHICH MAY ADOPT OR DIFFER FROM THE FOLLOWING RECOMMENDATIONS.

Based upon the foregoing Conclusions, the Administrative Law Judge makes the following:

#### RECOMMENDATION

IT IS HEREBY RECOMMENDED that the Transportation Regulation Board DENY the Petition of Lange Transport, Inc. for extension of charter carrier permit authority to transport passengers in Polk County outside a 50-mile radius from Gonvick, Minnesota and from the origin point of Wheeler's Point in Lake of the Woods County, to all points in Minnesota and return.

Dated this 20th day of October, 1995

/s/

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RICHARD C. LUIS

Administrative Law Judge

Reported: Taped

NOTICE

Pursuant to Minn. Stat. § 14.62, subd. 1, the Board is required to serve its final decision upon each party and the Administrative Law Judge by first class mail or as otherwise provided by law.

### MEMORANDUM

The Administrative Law Judge recommends denial of this Petition because he concludes that Lange's disregard for the territorial limits of its authority is blatant. Mr. Lange admitted that he knew at the time he made the unauthorized moves detailed above that he did not have the authority to perform this service, but at the time he did so anyway he gave "no thought whatsoever" to turning down the business or seeking a proper lease arrangement. To explain such a mental lapse by stating that he was flustered under the stress of a last minute rush situation suggests, in a broad sense, that Mr. Lange is unfit mentally to conduct the proposed operations. As to leasing, Mr. Lange's explaining of the unauthorized work for Sportsman's Lodge by saying he thought it was a "lease" to the Lodge and thus authorized transportation reflects a lack of awareness of what is involved in leases authorizing the transportation of passengers for hire. The situation contemplated under Minnesota's laws and rules applicable to motor carriers is that a carrier without authority leases its vehicle to the carrier that has the authority but is without a vehicle to make the trip. The vehicle operator then performs the service under the authority of the authorized carrier. In the Lange-Sportsman's Lodge situations outlined the Findings, Lange's vehicle may have been "leased" to the Lodge in the sense that the Lodge paid Lange for the transportation service, but neither party had the appropriate authority to operate a charter from the origin points of Wheeler's Point, Luverne, the Twin Cities, or Duluth. Lange certainly knew this. However, he went ahead and performed such charter moves on repeated occasions. This egregious behavior should not be condoned.

A similar lack of basic knowledge of the applicable laws and rules, or outright circumvention of them, took place with respect to the football charter from Nevis to Austin. Lange did not have the authority to operate a charter originating at Nevis, and he knew it. To think that he was exempt because he was a school bus operator, and thus allowed to hire out one of his motor coaches to a school district when he does not even operate the school buses for that district, strains credibility. Under that logic, Lange would be allowed to perform motor coach charters from anywhere in the state, so long as a school district was involved. If Mr. Lange truly believes such is the law, his mental ability to conduct the proposed operations is called into question again.

A similar disregard for or lack of knowledge of applicable laws and rules is demonstrated in Lange's explanation of why he picked up Girls State delegates in towns he knew he was not authorized to serve. His explanation, that the "original arrangement" was to pick up passengers only in towns he was allowed to serve as origin points, but because some of those people dropped out, he agreed to stop where he had no authority so that the trip could go forward, is inadequate. He could have turned down the job, or sought a lease arrangement with an authorized carrier, but, by his own admission, neither alternative entered his mind. If that is so, his mental ability to conduct the proposed operations is again called into question.

Lange's attempts to secure the contract to transport the University of Minnesota-Crookston's athletic teams, reflecting a history of applying and re-applying when he knows he is without authority to perform the work, calls the Petitioner's competency into further question.

Finally, Lange's believing he had a legal oral "lease" with Sportsman's Lodge ignores the fact that motor vehicle carrier leases are required to be in writing in order to be valid. See Minn. Rules 7800.2500-7800.2700.

In determining fitness and ability, it is not normally a purpose to punish a carrier for past unlawful actions. In New Ulm Freight Lines, Inc., IRCC 649/A-75-24, 30 (1979), the Public Utilities Commission stated:

"The object of determining fitness is not to punish the carrier for past unlawful operations . . . It is to determine the applicant's willingness and ability to conduct the future operations in conformity with the statutes and applicable rules and regulations of the commission . . ."

In a number of cases, the Public Utilities Commission and the Board have determined that flagrant, persistent, illegal activity evidencing a character of mind which makes it unlikely that a carrier will comply with the Transportation Rules and Regulations of the state in the future renders that carrier unfit. In the Matter of the Petition of Twin Cities International Courier, Inc., CSC 5-338/A-83-354, Order No. 5, March 12, 1984; In the Matter of the Joint Petition of Howard Taylor, d/b/a Taylor Transfer and Metropolitan Contract Services, Inc. to Transfer Local Cartage Authority; LCC 713, 827/7-84-304, Order, May 30, 1985.

The traditional test of whether an applicant's prior violations of motor carrier statutes and rules renders the applicant unfit to conduct the proposed operations has been framed in terms of the previous violations evidencing a continuing and willful disregard for the law. Brinks, Inc. v. Minnesota Public Utilities Commission, 355 N.W.2d 446, 450 (Minn. App. 1984).

In comparing the conduct of the Petitioner with the standards outlined in the preceding two paragraphs, the Administrative Law Judge cannot, in good conscience, recommend that the Petition in this case be granted. Rather, he is persuaded that the evidence establishes that the Petitioner is not fit and able to conduct the proposed operations.

If the Board rejects the Judge's Recommendation that the Petition be denied on the basis of unfitness and inability, and decides that Lange Transport is "fit and able" within the meaning of Minn. Rule 7800.0100, Subp. 4, it is appropriate to decide whether, and/or to what extent, a need for the additional proposed service has been established.

Turning first to the demonstrated need at Wheeler's Point in Lake of the Woods County, the Administrative Law Judge concluded that the need for additional permitted charter carrier services was established based on the testimony of Jerry Hennum, owner of Sportsman's Lodge at that location, to the effect that his resort requires the services of a chartered motor coach approximately 15 times each year and that he cannot rely at present on the carriers authorized to serve the area to fill his charter

coach needs. This testimony essentially went unchallenged, except for Bemidji's allegation that it has never turned down an opportunity to serve the Sportsman's Lodge. It is concluded that it has not been established that existing authorized carriers can fill the current need at Wheeler's Point.

Regarding the need in the "balance of Polk County" outside a 50-mile radius from Gonvick, the ALJ concludes that such a need has been established in the City of Crookston, but not elsewhere in the territory sought. The Petitioner's only witnesses as to Polk County needs were from Crookston, and they limited their testimony to needs in that community. In the absence of evidence establishing a need elsewhere in the county, and given Mr. Lange's testimony that he has no intention of competing for charter business in East Grand Forks, it is appropriate to focus on Crookston only with respect to the establishment of a need for the grant of additional charter carrier authority in the "balance of Polk County" territory.

The Judge concludes that a need has been established for the authorization of additional charter carrier service for Crookston. In arriving at that conclusion, he has been persuaded that Bemidji's presence in the community is limited (it has a few customers, most notably the Minnesota-Crookston Athletic Department, but confines its promotion to a Yellow Pages ad), and there is no evidence of the activity level in Crookston of Red River Trails or any other carrier currently authorized to serve the community. The record contains evidence of considerable activity in the community on the part of Triangle, but as of the time of the hearing, Triangle had abandoned its regular route bus service to Crookston and was not pursuing actively the "incidental charter" authority that went with it. Also, as of October 6, 1995, Triangle has no authority to operate charters from Crookston and it would be improper to assume (for the purpose of a present need analysis) that Triangle's pending Petition will be granted to return to that market. Given these factors, particularly the "open market" created in the absence of Triangle, it is appropriate to consider the Crookston charter market as being in need of additional authorized charter carrier service. Since Triangle is not authorized currently, it has not been established that currently permitted charter carriers can meet fully and adequately the needs for charter carrier service in Crookston.

RCL